

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 04, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TERESA M.,¹

Plaintiff,

v.

MARTIN O'MALLEY, Commissioner of
Social Security,

Defendant.

No. 2:24-cv-00110-EFS

**ORDER REVERSING THE ALJ'S
DENIAL OF BENEFITS, AND
REMANDING FOR FURTHER
PROCEEDINGS**

Due to post-traumatic stress disorder (PTSD), major depressive disorder, anxiety, attention deficit disorder, bipolar disorder, degenerative disc disease of the cervical and lumbar spine, and seizures, Plaintiff Teresa M. claims that she is unable to work fulltime and applied for disability insurance benefits and supplemental security income benefits. She appeals the denial of benefits by the

¹ For privacy reasons, Plaintiff is referred to by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

1 Administrative Law Judge (ALJ) erred at step two in failing to find her mental
2 impairments to be severe, and improperly evaluated the medical opinion evidence.
3 As is explained below, the ALJ erred. This matter is remanded for further
4 proceedings.

5 **I. Background**

6 In June 2020, Plaintiff filed applications for benefits under Title 2 and Title
7 16, claiming disability beginning January 23, 2012², based on the physical and
8 mental impairments noted above.³ Plaintiff's claim was denied at the initial and
9 reconsideration levels.⁴ After the agency denied Plaintiff benefits, ALJ Lori Freund
10 held a telephone hearing in July 2022, at which Plaintiff appeared with her
11 representative.⁵ Plaintiff and a vocational expert both appeared to testify but the
12 hearing was not completed because it started late and the vocational expert did not
13 testify.⁶ ALJ Freund held a supplemental hearing in June 2023, and Plaintiff and
14 a vocational expert testified.⁷

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16 ² AR 46. At the hearing Plaintiff's attorney amended the onset date to September 30,
17 2016.

18 ³ AR 497, 504, 551.

19 ⁴ AR 296, 308, 323.

20 ⁵ AR 172-193.

21 ⁶ Id.

22 ⁷ AR 199-229.

1 On July 14, 2022, Plaintiff testified that she has not worked since the
2 amended onset date.⁸ Plaintiff testified that she has disc disease in her back and
3 had one surgery already and requires a second fusion surgery for her lumbar spine
4 but she had complications after her first surgery and has been scared of doctors
5 since.⁹ She had the surgery in 2015 and was in a coma for three days because she
6 was prescribed medication that she had a reaction to and was hospitalized.¹⁰
7 Plaintiff stated that she thinks her doctors are trying to hurt her because she was
8 fine prior to her getting an MRI but after the MRI she could not walk for three
9 days.¹¹ She said she cannot see a doctor or nurse without panicking.¹² Plaintiff said
10 she does receive counseling through an app on her phone which allows her to text
11 an “expert” but that her insurance does not cover the treatment.¹³

12 Plaintiff said she saw Dr. Miguel Santos in 2015 and tried to go to the clinic
13 two years prior but is too afraid of doctors to go.¹⁴ She said she does not take
14 medication because she refuses to take it after the reaction to medication that left

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16 ⁸ AR 180

17 ⁹ AR 180-181.

18 ¹⁰ AR 181.

19 ¹¹ AR 181-182.

20 ¹² AR 182.

21 ¹³ AR 182-183.

22 ¹⁴ AR 183.

1 her in a coma, and that she was awarded benefits from DSHS, after DSHS sent her
2 to see a doctor named Barbara for evaluation two years before.¹⁵ She later
3 confirmed that the doctor was Kathleen Mayers and it was the SSA that sent her
4 to Dr. Mayers.¹⁶ Plaintiff testified that she smokes marijuana three times a week
5 because she is having a hard time mentally.¹⁷ She said that she will use two to
6 three marijuana joints in a month to alleviate pain and uses no other drugs, and
7 that she also uses alcohol two to three times in a month.¹⁸ Plaintiff said she had
8 been arrested for possession of drug paraphernalia but that she tested negative for
9 drugs.¹⁹ She was incarcerated on the drug charge for ten days.²⁰ She said that in
10 2016 she took prescribed medication and her heart stopped.²¹

11 Plaintiff said she could not work because she would have trouble getting out
12 of bed due to physical and mental impairments, and that she also does not have a
13 car.²² She last worked in 2012 and misses the structure of working but she has
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15 ¹⁵ AR 184.

16 ¹⁶ *Id.*

17 ¹⁷ AR 185.

18 ¹⁸ AR 186.

19 ¹⁹ AR 186-187.

20 ²⁰ *Id.*

21 ²¹ AR 187.

22 ²² AR 188.

1 constant pain and the grandmother who raised her just died.²³ She said she feels
2 alone and wants to work but that she cannot focus on anything.²⁴ Plaintiff said her
3 back pain is always bad but varies, and that on a good day it is a three or four and
4 on a bad day it is a ten.²⁵ She said that on average she will have two and a half to
5 three weeks of bad days a month and that the longest she went was a month and a
6 half.²⁶ The ALJ then closed the hearing due to time considerations.²⁷

7 On June 7, 2023, Plaintiff appeared via telephone from the South Boise
8 Women's Correctional Center with her attorney for a supplemental hearing before
9 ALJ Freund.²⁸ Plaintiff testified and a vocational expert testified.²⁹ Plaintiff
10 testified that she fell on ice in 2012 and crushed two of her lumbar discs and had
11 suffered from pain since, as well as PTSD from being in a coma following her back
12 surgery.³⁰ She said that she is supposed to have a spinal fusion but is scared to

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15²³ AR 189.

16²⁴ *Id.*

17²⁵ AR 189-190.

18²⁶ AR 190.

19²⁷ AR 191-192.

20²⁸ AR 199-229.

21²⁹ *Id.*

22³⁰ AR 204.

1 have it.³¹ She said she was treated and examined when she was in a correctional
2 facility in March and had x-rays but no treatment other than Naproxen for her
3 pain and amitriptyline for depression.³² She had been incarcerated since December
4 14, 2022, and had two weeks left to serve and was in for possession of
5 methamphetamine.³³ Plaintiff denied recent use of meth and said she last used it
6 in 2012, but was using marijuana three to four times a month.³⁴ She said she used
7 marijuana because she did not have insurance and could not afford pain
8 medication.³⁵

9 Plaintiff said she was awarded benefits in 2014, but the benefits were
10 terminated because she was scheduled to go to a doctor for a review and was too
11 scared to go and stated that she had not gone for treatment.³⁶ She said that when
12 she began receiving medical benefits again she reapplied for social security.³⁷
13 Plaintiff was confused regarding the purpose of her hearing and told the ALJ that
14 she thought she was filing an appeal of her cessation but the ALJ explained that

15
16³¹ *Id.*

17³² *Id.*

18³³ AR 205.

19³⁴ *Id.*

20³⁵ AR 206.

21³⁶ AR 206-207.

22³⁷ AR 207.

1 the hearing was regarding a new application.³⁸ The ALJ stated that the application
2 before her was from 2020.³⁹ Plaintiff said she was receiving mental health
3 treatment from the correctional facility where she was currently incarcerated but
4 that prior to that she was not receiving treatment.⁴⁰ She said that she was hoping
5 she could get treatment through the aftercare program when she was released
6 from prison.⁴¹ When she was tested in June 2022, Plaintiff was negative for both
7 methamphetamine and marijuana.⁴²

8 Plaintiff said again that she was scared of pain medication because she
9 overdosed on it, and that she was prescribed nine pills at the same time but should
10 not have been taking them together.⁴³ She was hospitalized from the reaction to
11 the multiple prescriptions.⁴⁴

12 Plaintiff said that she was charged with possession of methamphetamine
13 after she was hanging out with her ex-boyfriend and he drugged her drink.⁴⁵ She
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15 ³⁸ *Id.*

16 ³⁹ AR 207-208.

17 ⁴⁰ AR 208.

18 ⁴¹ AR 208-209.

19 ⁴² AR 209.

20 ⁴³ AR 210.

21 ⁴⁴ *Id.*

22 ⁴⁵ *Id.*

1 said in the past she was in prison for bank fraud and went through drug treatment
2 and was working.⁴⁶ She said she did not do drugs since her release from federal
3 prison and that she was with the wrong person at the wrong time but that her
4 recent incarceration had grounded her.⁴⁷ She said that once she was released she
5 would look into stem cell therapy and pain management, but was still too scared to
6 do another surgery.⁴⁸ She said that following her first surgery she was in a coma
7 for three days, needed to learn to walk again, and had amnesia for a year.⁴⁹

8 Plaintiff said the main symptom that prevents her from working is back pain
9 that radiates into her left leg.⁵⁰ She said she did not have a job in prison because
10 she had tried to work at one in the commissary for a month but it exacerbated her
11 back pain.⁵¹ She said that she also has pain and numbness in her fingers
12 bilaterally.⁵² Plaintiff said that she had to switch the phone four times during the
13 hearing and that the clinic did an x-ray and told her that she arthritis in her neck

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16⁴⁶ AR 211.

17⁴⁷ *Id.*

18⁴⁸ AR 212.

19⁴⁹ *Id.*

20⁵⁰ AR 213.

21⁵¹ *Id.*

22⁵² AR 214.

1 and a pinched nerve in her left shoulder.⁵³ She had the x-rays in March and then
2 went to a physical therapist who gave her exercises to do.⁵⁴

3 Plaintiff said she was first incarcerated in September 2022, and would be
4 continuing to receive mental health treatment once she was released.⁵⁵ She said in
5 prison she was getting treatment and was on amitriptyline which she thought was
6 helpful.⁵⁶ She said she feared that she would be given more medication and did not
7 trust doctors to prescribe medication correctly after her coma.⁵⁷ She said that in
8 the past she had been prescribed three narcotics, one anti-psychotic, Cymbalta, and
9 a muscle relaxer.⁵⁸ Plaintiff said that when she was taking the medications she
10 was having visual and auditory hallucinations.⁵⁹ She said that she also has
11 problems with her memory and loses things.⁶⁰ She said that as a result of back
12 pain she can stand for 15 to 20 minutes, and will balance back and forth; that she
13 can sit for longer but has to adjust her position because her hands go numb; and

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⁵³ *Id.*

16⁵⁴ *Id.*

17⁵⁵ AR 216.

18⁵⁶ *Id.*

19⁵⁷ AR 216-217.

20⁵⁸ AR 217.

21⁵⁹ *Id.*

22⁶⁰ AR 218.

1 that she can walk for a mile.⁶¹ She said she cannot lift more than a gallon of milk.⁶²
2 She said that at times she needs help to brush her hair.⁶³

3 After the last hearing, the ALJ issued a decision denying benefits.⁶⁴ The ALJ
4 found Plaintiff's alleged symptoms were not entirely consistent with the medical
5 evidence and the other evidence.⁶⁵ As to medical opinions, the ALJ found:

- 6 • The opinions of state agency evaluator Michael Brown, PhD, to be not
7 persuasive.
- 8 • The opinion of state agency evaluator John Wolfe, PhD, that there
9 was insufficient evidence to evaluate the claim as of the date of review
10 to be neither persuasive nor valuable.
- 11 • The opinions of state agency evaluator Norman Staley, MD, to be
12 persuasive.
- 13 • The opinion of state agency evaluator Paula Lantsberger, MD, that
14 there was insufficient evidence to evaluate the claim as of the date of
15 review to be neither persuasive nor valuable.

16 _____
17 ⁶¹ AR 219-220.

18 ⁶² AR 220.

19 ⁶³ *Id.*

20 ⁶⁴ AR 43-64. Per 20 C.F.R. §§ 404.1520(a)-(g), 416.920(a)-(g), a five-step evaluation
21 determines whether a claimant is disabled.

22 ⁶⁵ AR 52-53.

- 1 • The opinions of consultative examiner Aril Lien, MD, to be partially
- 2 persuasive.
- 3 • The opinions of consultative examiner Thomas Genthe, PhD, to be not
- 4 persuasive.
- 5 • The opinions of treating source Bailey White, LCSW, to be not
- 6 persuasive.
- 7 • The opinions of consultative examiner Dennis Dych, PhD, to be at
- 8 most minimally persuasive.
- 9 • The opinions of consultative examiner Kathleen Mayers, PhD, to be
- 10 partially persuasive.⁶⁶

11 The ALJ also found a letter written by Plaintiff's friend to be not consistent with
12 the objective record.⁶⁷ As to the sequential disability analysis, the ALJ found:

- 13 • Plaintiff meets the insured status requirements of the Social Security
- 14 Act through December 31, 2021.
- 15 • Step one: Plaintiff had not engaged in substantial gainful activity
- 16 since her alleged onset date of September 30, 2016.
- 17 • Step two: Plaintiff had the following medically determinable severe
- 18 impairments: degenerative disc disease of the cervical and lumbar

21 ⁶⁶ AR 53-57.

22 ⁶⁷ AR 57.

1 spine. The ALJ also found that Plaintiff's mental illnesses were not a
2 severe impairment.

- 3 • Step three: Plaintiff did not have an impairment or combination of
4 impairments that met or medically equaled the severity of one of the
5 listed impairments, including specifically Listing 1.00 and 1.15.
6 • RFC: Plaintiff had the RFC to perform a full range of work at the
7 light level of exertion but with the following exceptions:

8 [Plaintiff] can lift and carry 20 pounds occasionally and 10
9 pounds frequently, could sit for at least 6 hours in an 8 hour
10 workday, could walk for at least 6 hours in an 8 hour workday,
11 and could stand for a total of up to 4 hours in an 8 hour workday.
12 She should avoid climbing ladders, ropes or scaffolds, and
13 unprotected heights.

- 14 • Step four: Plaintiff is able to perform her past relevant work as a
15 survey workers as it was actually performed but not as it is generally
16 performed, and is able to perform her past relevant work as a
17 telephone operator both as it was actually performed and as it is
18 generally performed.
19 • Step five: in the alternative, considering Plaintiff's RFC, age,
20 education, and work history, Plaintiff could perform work that existed
21 in significant numbers in the national economy, such as a collator
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operator (DOT 208.685-010), routing clerk (DOT 222.687-022), and parking lot attendant (DOT 915.473-010).⁶⁸

Plaintiff timely requested review of the ALJ's decision by the Appeals Council and now this Court.⁶⁹

II. Standard of Review

The ALJ's decision is reversed "only if it is not supported by substantial evidence or is based on legal error,"⁷⁰ and such error impacted the nondisability determination.⁷¹ Substantial evidence is "more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁷²

⁶⁸ AR 49-59.

⁶⁹ AR 1-4, 493.

⁷⁰ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). See 42 U.S.C. § 405(g).

⁷¹ *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)), superseded on other grounds by 20 C.F.R. §§ 404.1520(a), 416.920(a), (recognizing that the court may not reverse an ALJ decision due to a harmless error—one that "is inconsequential to the ultimate nondisability determination").

⁷² *Hill*, 698 F.3d at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)). See also *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007) (The court "must consider the entire record as a whole, weighing both the evidence that supports and the evidence that detracts from the Commissioner's conclusion," not

III. Analysis

2 Plaintiff seeks relief from the denial of disability on two grounds. She argues
3 the ALJ erred at Step Two by failing to find that Plaintiff's mental illness was a
4 severe impairment, and erred when evaluating the medical opinion evidence. The
5 Commissioner argues that the ALJ did not err in finding Plaintiff's mental
6 impairments to be non-severe at step two because she performed the psychiatric
7 review technique and did not err in resolving conflicts in the medical testimony.
8 As is explained below, the Court concludes that the ALJ's error at step two and in
9 evaluating the medical opinions was consequential. The Court also concludes that
10 the record requires development.

A. Step Two: Plaintiff establishes consequential error.

12 Plaintiff argues that the ALJ erred at step two by failing to find her
13 depressive disorder, anxiety disorder, PTSD, ADHD, personality disorder, and
14 neurocognitive disorder to be a severe impairment.⁷³ The Commissioner argues
15 that the ALJ did not err in finding Plaintiff's mental impairments to be nonsevere
16 because the ALJ performed the psychiatric review technique and found that

simply the evidence cited by the ALJ or the parties.) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998) (“An ALJ’s failure to cite specific evidence does not indicate that such evidence was not considered[.]”).

73 ECF No. 8.

1 Plaintiff had a mild limitation in each of the four broad areas of functioning.⁷⁴ In
2 her reply, Plaintiff counter-argues that the ALJ arrived at her finding that
3 Plaintiff had only a mild limitation in the four areas of function by ignoring
4 relevant objective findings in examinations and focusing on only those finding
5 which supported her conclusions.⁷⁵ The Court agrees with Plaintiff and finds that
6 the ALJ's error was consequential.

7 1. Standard

8 At step two of the sequential process, the ALJ determines whether the
9 claimant suffers from a “severe” impairment, i.e., one that significantly limits her
10 physical or mental ability to do basic work activities.⁷⁶ This involves a two-step
11 process: 1) determining whether the claimant has a medically determinable
12 impairment and 2), if so, determining whether the impairment is severe.⁷⁷

13 Neither a claimant’s statement of symptoms, nor a diagnosis, nor a medical
14 opinion sufficiently establishes the existence of an impairment.⁷⁸ Rather, “a
15 physical or mental impairment must be established by objective medical evidence

18 74 ECF No. 10.

19 75 ECF No. 11.

20 76 20 C.F.R. §§ 404.1520(c), 416.920(c).

21 77 *Id.* §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

22 78 *Id.* §§ 404.1521, 416.921.

1 from an acceptable medical source.”⁷⁹ Evidence obtained from the “application of a
2 medically acceptable clinical diagnostic technique, such as evidence of reduced joint
3 motion, muscle spasm, sensory deficits, or motor disruption” is considered objective
4 medical evidence.⁸⁰ If the objective medical signs and laboratory findings
5 demonstrate the claimant has a medically determinable impairment,⁸¹ the ALJ
6 must then determine whether that impairment is severe.⁸²

7 The severity determination is discussed in terms of what is *not* severe.⁸³ A
8 medically determinable impairment is not severe if the “medical evidence
9 establishes only a slight abnormality or a combination of slight abnormalities
10 which would have no more than a minimal effect on an individual’s ability to

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⁷⁹ *Id.*

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⁸⁰ 3 Soc. Sec. Law & Prac. § 36:26, Consideration of objective medical evidence (2019).

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See also 20 C.F.R. § 416.913(a)(1).

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⁸¹ “Signs means one or more anatomical, physiological, or psychological
19 abnormalities that can be observed, apart from [a claimant’s] statements
20 (symptoms).” 20 C.F.R. §§ 404.1502(1), 416.902(l).

21

⁸² *See* Soc. Sec. Ruling (SSR) 85-28 at *3 (1985).

22

⁸³ *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996).

1 work.”⁸⁴ Because step two is simply to screen out weak claims,⁸⁵ “[g]reat care
2 should be exercised in applying the not severe impairment concept.”⁸⁶

3 2. The ALJ’s Findings

4 When considering impairments at step two, the ALJ found that Plaintiff’s
5 mental impairments were not severe.⁸⁷ The ALJ found that Plaintiff had a mild
6 limitation or no limitation in each of the four functional areas.

7 As to the functional area of understanding, remembering, and applying
8 information, the ALJ noted that in one examination Plaintiff forgot four of four
9 objects after five minutes, but reasoned that she was able to use a computer, drive
10 a car, play games on her phone, play musical instruments, perform simple
11 mathematical calculations, and answer questions at her hearing, which indicated a
12 mild impairment.⁸⁸

13 As to the functional area of interacting with others, the ALJ reasoned that
14 although Plaintiff’s mood was noted to be agitated and irritable, she was able to go
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18 ⁸⁴ *Id.*; see SSR 85-28 at *3.

19 ⁸⁵ *Smolen*, 80 F.3d at 1290.

20 ⁸⁶ SSR 85-28 at *4.

21 ⁸⁷ AR 49-51.

22 ⁸⁸ AR 49-50.

1 to church, go shopping, spend time in casinos, and interact with people at her
2 hearing, which indicated a mild impairment.⁸⁹

3 As to the functional area of concentrating, persisting, and maintaining pace,
4 the ALJ found a mild limitation and articulated the following reasoning:

5 The claimant reported difficulty with concentration and completing
6 tasks (Ex. B4E). The claimant also reported that she is able to go
7 shopping and manage her own finances, she spends time watching
8 movies and reading, playing games, working on a computer, playing
9 musical instruments, and learning new tasks, all of which generally
10 require an ability to concentrate, persist, and maintain pace (Ex. B4E,
11 B7F/2). She also reported that she is able to follow written
12 instructions “100%” and spoken instructions “95%” and that she
13 spends time doing “testing games, for which she receives
14 compensation”, which suggests she is able to complete tasks (Id.). She
15 also reported that she is able to manage her own finances, that she
enjoys doing puzzles and playing games, and that she is able to use a
computer and drive a car, all of which suggest an ability to
concentrate and complete tasks (Ex. B4E, B2F/3, Hearing Testimony).
At her consultative examination she was able to perform Serial 7
testing and mathematical calculations, she was able to spell WORLD
backwards, and her concentration was noted to be “average” (Ex.
B7F/4). Finally, the claimant was able to participate throughout the
hearing for the duration of the hearing with no apparent difficulty.
For these reasons, the undersigned finds that the claimant has a mild
limitation concentrating, persisting, or maintaining pace.⁹⁰

16 Lastly, the ALJ considered the fourth functional area of adapting and
17 managing oneself and found a mild limitation, articulating her reasoning that
18 Plaintiff was able to spend time in the supermarket, perform household tasks,

21 ⁸⁹ AR 50.

22 ⁹⁰ Id.

1 schedule doctor's appointments, and reported in December 2022 that she was
2 "working."⁹¹

3 3. Relevant Medical Records

4 Because the Court is considering the ALJ's evaluation of mental
5 impairments, only those medical records which are relevant will be included.

6 a. Dr. Brown

7 On October 29, 2020, at the initial level, state agency consultant Michael
8 Brown, PhD, reviewed Plaintiff's file.⁹² Dr. Brown opined that Plaintiff would have
9 a moderate limitation in the following four domains: understand, remember, or
10 apply information; interact with others; and concentrate, persist, or maintain
11 pace.⁹³ Dr. Brown opined that Plaintiff would have no limitation in the domain of
12 adapting or managing oneself.⁹⁴ Dr. Brown opined Plaintiff is moderately limited in
13 the ability to: understand and remember detailed instructions; carry out detailed
14 instructions; maintain attention and concentration for extended periods; and work
15 in coordination with or proximity to others without being distracted by them.⁹⁵
16 Dr. Brown explained the basis of those limitations, stating:

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18 ⁹¹ AR 50-51.

19 ⁹² AR 267.

20 ⁹³ *Id.*

21 ⁹⁴ *Id.*

22 ⁹⁵ AR 273-274.

1 Amount of detail clmt provided in response to questions was excessive.
2 Normal rate and inflections. Mood was worried. Clmt is cooperative and
3 friendly. Understood instructions. Appeared attentive and interested.
4 Thought process she was delayed in reaching the point tangential. and
5 circumstantial. Delayed recall 0/4 items after five minutes. Was able
6 accurately repeat the words "pear". Can spell WORLD backward. able
7 to multiple 25x7. Had difficulty following the conversation. 10/20
8 Friendly, eye contact is good. Spoke in a generally logical, coherent and
9 goal directed manner. Depressed Currently having panic attacks.
10 Performed serial Able to spell forward backward. Perform two different
11 three stage task. 10/20 Concentration is average. Able to perform a
12 three stage task. Digit span 7 number forward 4 backward. Able to
13 recall 3/3 after five min. The claimant retains the capacity to
14 understand and remember simple instructions, Can do three step
15 command.⁹⁶

16 Dr. Brown opined that Plaintiff is moderately limited in the following social
17 tasks: interact with the general public; accept instruction and criticism from
18 supervisors; and maintain socially appropriate behavior and adhere to basic
19 standards of neatness and cleanliness.⁹⁷

20 b. Dr. Wolfe

21 On November 9, 2021, at the reconsideration level, state agency consultant
22 John Wolfe, PhD, reviewed Plaintiff's file.⁹⁸ Dr. Wolfe wrote that the evaluation

23 ⁹⁶ AR 275.

24 ⁹⁷ *Id.*

25 ⁹⁸ SAR 283.

1 was over a year old and that there was no current evaluation from which he could
2 assess Plaintiff's current functioning.⁹⁹

3 c. Dr. Genthe

4 On May 20, 2020, Plaintiff was examined by Thomas Genthe, PhD, at the
5 request of the Washington State Department of Social and Health Services.¹⁰⁰
6 Dr. Genthe's report included a psychosocial history, a treatment history, an
7 education and work history, a substance use history, a mental status examination,
8 a diagnosis, and a medical source statement.¹⁰¹ Plaintiff reported that she was
9 divorced and homeless at the time of her examination, living on the street and
10 periodically staying at a shelter or with friends.¹⁰² She reported that she was
11 incarcerated for 5 years for bank fraud and that she had no difficulty getting along
12 with others.¹⁰³ Plaintiff had no psychiatric hospitalizations but had been in
13 treatment in the past and been prescribed psychotropic medication but at the time
14 of the examination was neither in treatment or medicated.¹⁰⁴ Plaintiff reported
15 that she went to the 10th grade in school and later got a GED, and that she had last
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17 ⁹⁹ *Id.*

18 ¹⁰⁰ AR 667-674.

19 ¹⁰¹ *Id.*

20 ¹⁰² AR 667.

21 ¹⁰³ *Id.*

22 ¹⁰⁴ AR 668.

1 worked in 2012 at a job she held for 4 years and left due to a back injury.¹⁰⁵
2 Plaintiff reported a remote history of alcohol and substance use, as well as
3 infrequent use of marijuana.¹⁰⁶ Plaintiff reported she was able to manage ordinary
4 activities of daily living.¹⁰⁷

5 On mental status examination, Plaintiff's speech was a normal rate and
6 fairly well articulated but she provided an excessive amount of detail; she was
7 cooperative and appeared genuine; her thought content was free of hallucination
8 and delusion but her thought process was abnormal with a tangential and
9 circumstantial process; she was oriented; her perception was normal; her memory
10 was impaired with good immediate recall but very poor short-term recall and poor
11 long term recall; she had a normal fund of knowledge; her concentration was
12 limited and she had significant difficulty following the conversation; her ability to
13 think abstractly was limited; and her insight and judgment was fair to poor.¹⁰⁸

14 Dr. Genthe opined that Plaintiff had a moderate limitation in completing the
15 following activities: understand, remember and persist in following short
16 instructions; perform routine tasks without special supervision; make simple work-

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19 ¹⁰⁵ *Id.*

20 ¹⁰⁶ *Id.*

21 ¹⁰⁷ AR 668-669.

22 ¹⁰⁸ AR 671-673.

1 related decisions; and ask simple questions.¹⁰⁹ Dr. Genthe opined that Plaintiff
2 would have a marked limitation in the following activities: perform tasks within a
3 schedule, maintain attendance, and be punctual; learn new tasks, be aware of
4 hazards; and set realistic goals and plan independently.¹¹⁰ Dr. Genthe opined that
5 Plaintiff would have a severe limitation in the following activities: understand,
6 remember and persist in following detailed instructions; adapt to changes in a
7 routine work setting; communicate and perform effectively; maintain appropriate
8 behavior; and complete a normal work day or work week without interruption.¹¹¹
9 Dr. Genthe diagnosed major depressive disorder, ADHD, and panic disorder.¹¹² He
10 recommended continued treatment and stated that Plaintiff was unlikely to
11 function adequately or consistently in a work setting until her psychological
12 symptoms were managed more effectively.¹¹³

13 d. LCSW White

14 On November 30, 2022, Bailey White, LCSW, performed a comprehensive
15 diagnostic assessment while Plaintiff was incarcerated.¹¹⁴ LCSW White opined

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17 ¹⁰⁹ AR 670.

18 ¹¹⁰ AR 670-671.

19 ¹¹¹ *Id.*

20 ¹¹² AR 671.

21 ¹¹³ *Id.*

22 ¹¹⁴ AR 694-701.

1 that Plaintiff posed no risk to others but had a moderate risk of suicide, and that a
2 mitigation plan should be in place to periodically monitor suicide risk.¹¹⁵ LCSW
3 White noted a prior history of alcohol and substance abuse.¹¹⁶ On mental status
4 examination, Plaintiff had fair eye contact; was groomed but wrung her hands; was
5 oriented; had no hallucinations or delusions; had an irritated and agitated mood;
6 had a dramatic manner; had paranoid and perseverative thought content with
7 flight of ideas and irrelevant answers; had accelerated and pressured speech; was
8 distractable and internally occupied; had average intelligence but impaired insight
9 and judgment; had restless motor function; and had soft spoken speech.¹¹⁷

10 LCSW White noted symptoms of mania, anxiety, and PTSD.¹¹⁸ Plaintiff
11 reported that she had an adverse response to a dentist because she did not trust
12 doctors after being in a coma for 3 days following surgery.¹¹⁹ She reported auditory
13 hallucinations and a belief that doctors were trying to kill her, as well as projecting
14 blame for her circumstances onto others.¹²⁰ LCSW opined that Plaintiff met the

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¹¹⁵ AR 697.

18¹¹⁶ *Id.*

19¹¹⁷ AR 697-698.

20¹¹⁸ AR 699.

21¹¹⁹ *Id.*

22¹²⁰ *Id.*

1 criteria for PTSD and borderline personality disorder.¹²¹ LCSW White
2 recommended mental health counseling, random drug testing, anger management,
3 dialectical behavior therapy, and substance abuse treatment.¹²²

4 e. Dr. Dyck

5 On June 30, 2017, Plaintiff was examined by consultative examiner Dennis
6 Dyck, PhD, at the request of the Commissioner.¹²³ Plaintiff reported that she had
7 problems with her mental health, memory, back pain, and seizures.¹²⁴ Dr. Dyck
8 reviewed medical records from River Front Medical Center prior to the
9 examination.¹²⁵ Plaintiff reported that she began having issues with her health and
10 memory in 2012, that she had made unwise decisions in the last year and did not
11 understand her decline in current circumstances, that she was not currently taking
12 medication or in treatment, that she had a history of substance use, and that she
13 lost everything after a back injury in 2012.¹²⁶ Dr. Dyck noted that Plaintiff
14 reported a history of homelessness, could not recall the ages of her five children,
15 reported holding a job in the past and doing work from home more recently,

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17 ¹²¹ AR 700.

18 ¹²² *Id.*

19 ¹²³ AR 652-656.

20 ¹²⁴ AR 652.

21 ¹²⁵ *Id.*

22 ¹²⁶ AR 652-653.

1 reported a GED but was a poor historian; reported taking psychotropic medications
2 in the past including Cymbalta, Seroquel, and hydroxyzine; and reported she
3 recently stopped taking medication after being hospitalized for cardiovascular
4 issues.¹²⁷ On mental status examination, Dr. Dyck found Plaintiff was well-
5 groomed but was fidgeting; was cooperative and showed no sign of malingering;
6 had a flat affect and stated that she was confused and had been told that she was
7 missing for three months; endorsed delusions of being poisoned, and suffered
8 hallucinations but denied suicidal or homicidal ideation; had circumstantial
9 speech; was oriented; had good immediate and recent memory but limits in remote
10 memory; had a limited fund of knowledge; was able to concentrate; and was unable
11 to think abstractly.¹²⁸

12 Plaintiff reported living with an elderly couple and stated that she was able
13 to manage most activities and said in her free time she works on the computer and
14 plays on X-box.¹²⁹ Dr. Dyck noted that Plaintiff had decompensated in the past in a
15 work environment.¹³⁰ Dr. Dyck diagnosed PTSD, chronic, severe; and a rule out
16 diagnosis of dissociative disorder with amnesia; and opined that her prognosis was
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19 ¹²⁷ AR 653.

20 ¹²⁸ AR 653-654.

21 ¹²⁹ AR 654.

22 ¹³⁰ *Id.*

1 poor to guarded.¹³¹ Dr. Dyck opined that Plaintiff had intact ability to reason,
2 adaptation skills, memory, concentration, and persistence.¹³² He opined that
3 Plaintiff would have marked impairments in the following: the ability to interact
4 with coworkers and the public, the ability to maintain attendance, the ability to
5 complete a normal work day or work week without interruption from symptoms,
6 and the ability to deal with the usual stress encountered in the work place.¹³³

7 f. Dr. Mayers

8 On October 20, 2020, Plaintiff was examined via video by consultative
9 examiner Kathleen Mayers, PhD, at the request of the Commissioner.¹³⁴ Prior to
10 the examination, Dr. Mayers reviewed the May 2020 evaluation of Dr. Genthe.¹³⁵
11 Plaintiff reported that she had no psychiatric hospitalizations but had psychiatric
12 treatment in the past and was planning to restart it; that she used alcohol and
13 drugs in the past but presently only took marijuana for pain; that she has back
14 pain and degenerative disc disease and head trauma as a teenager and needs
15 surgery but does not want to be given anesthesia because she was in a coma for 3
16 days after a prior surgery; that she has no relationship with her parents, siblings,

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18 ¹³¹ *Id.*

19 ¹³² AR 655.

20 ¹³³ *Id.*

21 ¹³⁴ AR 686-691

22 ¹³⁵ AR 686.

1 or children; that she completed high school and a technical college; that she was in
2 prison for four years for bank fraud; and that she was last employed in 2012 in a
3 job she had held over 3 years but she suffered a back injury.¹³⁶

4 On mental status examination, Plaintiff was well groomed, cooperative and
5 maintained good eye contact; her speech was logical but occasionally tangential;
6 her mood and affect were depressed; she described herself as anxious; she reported
7 memory lapses; she had signs of PTSD such as intrusive memories, startle
8 response, and hypervigilance; she denied current suicidal or homicidal thoughts;
9 she was oriented; her concentration was average; her memory was variable,
10 ranging from poor to average depending on the task; her fund of knowledge was
11 average; and her judgment was average and her insight fair.¹³⁷

12 Dr. Mayes diagnosed major depressive disorder; generalized anxiety disorder
13 with panic attacks; alcohol use disorder, in remission; features of PTSD; and rule
14 out neurocognitive disorder.¹³⁸ Dr. Mayes opined the following:

15 In my opinion, she needs supportive mental health therapy services.
16 This will be a slow process because she is not willing to take
17 prescribed medication again. Eventually, she is likely to be able to
18 maintain a routine work schedule, follow instructions, manage minor
work-related stressors, interact appropriately with others, and
function in a productive manner, but in my view, her depression and

19 ¹³⁶ AR 686-688.

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21 ¹³⁷ AR 687-689.

22 ¹³⁸ AR 690.

1 anxiety disorders need to be managed and treated effectively for her
2 to reach this point.¹³⁹

3 4. Analysis

4 The ALJ found that Plaintiff had no severe mental impairment, despite the
5 fact that every source who examined Plaintiff or rendered an opinion opined that
6 Plaintiff had a moderate or marked limitation in at least one of the four functional
7 areas.

8 Initially, the Court notes that the ALJ's finding that Plaintiff was able to
9 easily remember facts, interact with others, and participate in her hearing is not
10 supported by the record. Plaintiff's first hearing started late because Plaintiff went
11 to the wrong location and had to be redirected by her attorney.¹⁴⁰ At both hearings,
12 she repeatedly implied in her testimony that she believed that her doctors had
13 tried to kill her because she was in a coma after a surgery and because her
14 condition worsened after she underwent an MRI.¹⁴¹ She incorrectly identified SSA's
15 consultative examiner Kathleen Mayes, PhD, who she had seen less than a year
16 prior, as a DSHS doctor named "Barbara."¹⁴² When she appeared for her second
17 hearing while incarcerated, she was not under the influence of any substance and

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¹³⁹ AR 691.

20 ¹⁴⁰ AR 179.

21 ¹⁴¹ AR 181, 182, 210, 216-217.

22 ¹⁴² AR 184.

1 was taking medication, but she was confused and believed that the hearing was
2 related to the appeal of her termination of benefits.¹⁴³ To the extent that the ALJ
3 reasoned that Plaintiff had no trouble recalling information at the hearing;
4 interacting with others at her hearing; or concentrating, persisting and
5 maintaining pace at the hearing, the ALJ was in error.¹⁴⁴

The ALJ failed to consider relevant evidence with regard to the functional area of understanding, remembering, or applying information. For instance, she failed to consider that Plaintiff did not accurately remember the place of her hearing and the relevant medical information, as noted above. She also did not consider that when examined by Dr. Genthe, Plaintiff's memory was impaired with good immediate recall but very poor short-term recall and poor long-term recall; she had a normal fund of knowledge; her concentration was limited, and she had significant difficulty following the conversation; her ability to think abstractly was limited; and her insight and judgment were fair to poor.¹⁴⁵

15 The ALJ also failed to consider that when examined by LCSW White
16 Plaintiff had paranoid and perseverative thought content.¹⁴⁶ Dr. Dyck noted that
17 Plaintiff was a poor historian and that on mental status examination she had good

143 AR 206-207.

144 AR 50-51.

145 AR 671-673.

146 AR 697-698.

1 immediate and recent memory but limits in remote memory.¹⁴⁷ The ALJ also
2 ignored Dr. Mayes' finding that on mental status examination Plaintiff's memory
3 was variable, ranging from poor to average depending on the task.¹⁴⁸ As a whole,
4 the record does not support the ALJ's finding that Plaintiff had a mild limitation in
5 the functional area of understanding, remembering, or applying information.

6 In reasoning that Plaintiff had a mild limitation in interacting with others,
7 the ALJ failed to consider evidence regarding paranoid and obsessive thoughts on
8 Plaintiff's part. She did not consider evidence that Plaintiff is unable to have a
9 relationship with her parents, her siblings or her own children, and is estranged
10 from her entire family.¹⁴⁹ As noted above, Plaintiff testified throughout both
11 hearings that she thought medical doctors were trying to kill her. Plaintiff reported
12 to LCSW White that doctors were trying to kill her.¹⁵⁰ Dr. Dyck also noted that
13 Plaintiff "endorsed delusions of being poisoned."¹⁵¹ This does not constitute
14 substantial evidence to support a finding that Plaintiff's limitation in interacting
15 with others is mild.

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18¹⁴⁷ AR 653-654.

19¹⁴⁸ AR 687.

20¹⁴⁹ AR 686-688.

21¹⁵⁰ AR 699.

22¹⁵¹ AR 654.

1 As to the functional area of adapting and managing oneself, the ALJ did not
2 consider LCSW White's statement that Plaintiff struggled with self-care or the
3 references in the record to bouts of homelessness.¹⁵² When considered as a whole,
4 the record does not support the ALJ's finding that Plaintiff had mild limitations in
5 all four functional areas.

6 Additionally, there are certain consistencies in the examinations which were
7 not considered by the ALJ both when performing the psychiatric review technique
8 and when considering the medical opinions. For example, all examiners noted
9 circumstantial and tangential thought process.¹⁵³ All noted depressed mood, flat
10 affect, anxious mood, and variable memory as well.¹⁵⁴

11 Although step-two errors are often harmless,¹⁵⁵ in instances when the ALJ
12 considered Plaintiff's other mental impairments later in the sequential evaluation,
13 here, the ALJ's step-two error was not harmless. The ALJ did not consider any
14 mental impairment in the later steps of the sequential evaluation.¹⁵⁶ The Court

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¹⁵² AR 584.

17¹⁵³ AR 671, 697, 653, 687.

18¹⁵⁴ *Id.*

19¹⁵⁵ See *Stout v. Comm'r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006);
20 *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005).

21¹⁵⁶ See *Burch* 400 F.3d at 2 682 ("Assuming without deciding that this omission
22 constituted legal error [at step two], it could only have prejudiced Burch in step
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1 concludes that the case should be remanded and the ALJ should be directed to
2 develop the record as necessary and to make a proper determination at step two
3 and all subsequent steps.

4 **B. Medical Opinions: Plaintiff established consequential error.**

5 As noted above, the ALJ erred in failing to properly consider the consistency
6 of the medical opinions as is required under the regulations.¹⁵⁷ Because the Court
7 has remanded the case for consideration of the record as a whole, the ALJ will be
8 required to consider the medical opinions, the third-party testimony, and the
9 credibility of Plaintiff's subjective complaints.

10 **C. Remand for Further Proceedings**

11 Plaintiff submits a remand for payment of benefits is warranted. The
12 decision whether to remand a case for additional evidence, or simply to award
13 benefits, is within the discretion of the court."¹⁵⁸ When the court reverses an ALJ's
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15 three (listing impairment determination) or step five (RFC) because the other
16 steps, including this one, were resolved in her favor.").

17 ¹⁵⁷ An ALJ must consider and articulate how persuasive she found each medical
18 opinion, including whether the medical opinion was consistent with and supported
19 by the record. 20 C.F.R. §§ 404.1520c(a)-(c), 416.920c(a)-(c); *Woods v. Kijakazi*, 32
20 F.4th 785, 792 (9th Cir. 2022).

21 ¹⁵⁸ *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987) (citing *Stone v. Heckler*,
22 761 F.2d 530 (9th Cir. 1985)).

1 decision for error, the court “ordinarily must remand to the agency for further
2 proceedings.”¹⁵⁹

3 The Court finds that further development is necessary for a proper disability
4 determination. Here, it is not clear what, if any, additional limitations are to be
5 added to the RFC. Therefore, the ALJ should properly consider the effects of all
6 Plaintiff's medically determinable and severe impairments, reevaluate the opinion
7 evidence, and make findings at each of the five steps of the sequential evaluation
8 process.

IV. Conclusion

Accordingly, IT IS HEREBY ORDERED:

1. The ALJ's nondisability decision is **REVERSED**, and this matter is **REMANDED** to the Commissioner of Social Security for further proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

2. The Clerk's Office shall **TERM** the parties' briefs, **ECF Nos. 8 and 10**, enter **JUDGMENT** in favor of **Plaintiff**, and **CLOSE** the case.

IT IS SO ORDERED. The Clerk's Office is directed to file this order and provide copies to all counsel.

¹⁵⁹ *Leon v. Berryhill*, 880 F.3d 1041, 1045 (9th Cir. 2017); *Benecke* 379 F.3d at 595 (“[T]he proper course, except in rare circumstances, is to remand to the agency for additional investigation or explanation”); *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014).

1 DATED this 4th day of September 2024.

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EDWARD F. SHEA
4 Senior United States District Judge
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